IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 79/2005

M/s. HCL Ltd.
A Company registered under the
Companies Act, 1956, having its
registered Office at 806-808,
Siddhartha, 96, Nehru Place,
New Delhi – 110 019,
through Shri Rajiv Kumar Chaudhary,
Authorised Officer, presently working
with HCL Infosystems Ltd.. ..... Petitioner.

V/s.

M/s. Krishna Nanu Naik and Sons,
A registered partnership firm with its
Principal place of business at Varde
Valaulicar Road, Margao, Goa
duly represented by its Partners namely :

1. Shri Crisna Nanu Naik,
   son of Nanu Naik, aged about 70 years,
   Businessman, residing at `Neera',
   A.D. Costa Road, Margao, Goa.

2. Shri Sandesh Krishna Naik,
   son of Crisna Nanu Naik, aged about
   40 years, businessman, residing t
   `Raigad', A.D. Costa Road,
   Margao, Goa. ..... Respondents.

Mrs. A.A. Agni, Advocate for the petitioner.

Respondents served – absent.

CORAM : A.P. LAVANDE, J.

DATE : 13th April, 2005

ORAL JUDGMENT :

Inspite of Order dated 10.3.2005, issued for final disposal of the petition, the respondents have chosen not to put in appearance. The petitioner is the defendant and the respondents are the plaintiffs in Special Civil Suit No.222/93/III before the Addl. Civil Judge, Sr. Division, Margao.

2. Rule. The matter is taken up for final disposal in terms of Order dated 10.3.2005. By this petition, the defendant in Special Civil Suit No.222/93/III, pending before the Addl. Civil Judge, Sr. Division, Margao, challenges the Order dated 13.1.2005, dismissing the application filed by the defendant, seeking to rely upon and produce the documents mentioned in the application dated 1.10.1994, filed by the defendant.

3. In Special Civil Suit No.222/93/III, the defendant had filed an application dated 1.10.1994, seeking leave to rely upon documents mentioned in the said application and produce the same at the time of evidence. It appears that the said application was not duly stamped and no order was passed by the trial Court on the said application. After the

plaintiff closed its evidence, the defendant sought to rely upon and produce the documents mentioned in the said application dated 1.10.94. The plaintiff objected to the same and after hearing both sides, the trial Court by impugned order partly allowed the application, permitting the defendant to produce the documents at serial Nos. 1 and 17, being the public documents. The trial Court while passing the impugned Order, held that the application filed by the defendant was not duly stamped. The trial Court further held that prejudice would be caused to the plaintiffs if the defendant is allowed to produce other documents. The trial Court also held that since the documents sought to be produced are the documents relied upon by the other side and have already been produced and exhibited, it was not necessary to permit the defendant to produce the said documents. In this petition, the defendant has filed an affidavit dated 12th April, 2005 of Shri Rajiv Kumar Chowdhary, stating therein that some of the documents have been already produced by the plaintiff on record and that the defendant desires to produce only the documents listed at serial Nos. 2, 9, 10, 11, 12, 16, 18 and 20 in the application dated 1.10.1994.

4. Mrs. Agni, learned Counsel appearing for the petitioner submitted that the impugned order discloses error of law, apparent on the face of record. The learned Counsel further submitted that the trial Court has not exercised the jurisdiction properly inasmuch as the

documents sought to be relied upon by the defendant were already produced in the earlier proceedings before the State Consumer Commission between the same parties. The learned Counsel submitted that the said documents are reflected in the pleadings of the defendant and, therefore, the trial Court ought to have permitted the defendant to produce the said documents, which have been mentioned in paragraph (3) above. According to the learned Counsel, no prejudice would be caused to the plaintiff inasmuch as the defendant had mentioned the said documents in the application dated 1.10.94 and the plaintiffs were aware that the defendant was relying upon the said documents. According to the learned Counsel, at the relevant time, no Court fee was payable and, therefore, the trial Court could not have held that the application could not be treated as an application in the eyes of law for want of necessary Court fee being affixed on the same. In any event, the learned Counsel submitted that even if the trial Court were to hold that the Court fee was payable, the defendant could have been asked to affix the Court fee and the trial Court could not have dismissed the application taking a technical view of the matter.

5. I have considered the submissions made by the learned Counsel for the petitioner. The records disclose that the application dated 1.10.94 seeking leave to rely upon and produce 20 documents was filed by the defendant. It appears that no order was passed on the

said application. However, the fact remains is that the plaintiff had the knowledge that the defendant was relying upon the documents mentioned in the said application. That being the position, I find myself unable to agree with the trial Court that the defendant had not made out sufficient cause for producing the said documents. In the present case, it cannot be said that the plaintiff is taken by surprise and that prejudice would be caused by permitting the defendant to rely upon the documents mentioned in paragraph (3) above. No doubt, the defendant ought to have invited an order from the trial Court on the said application, but, nonetheless the fact remains that the defendants had sought to rely upon and produce the said documents as back as 1.10.1994. Therefore, I am of the opinion that it could not be said that there was no sufficient cause made out by the defendant for producing the said documents. In so far as non-payment of Court fee is concerned, I am unable to accept the finding of the trial Court that the application could not be treated as an application in the eyes of law for want of affixation of the Court fee on the same. If the trial Court was to hold that the Court fee was payable, the defendant could have been called upon to pay the requisite Court fee. In any event, even if the Court fee was to be affixed on the said application, the same is very nominal. I am not inclined to accept the finding of the trial Court that the application deserves to be dismissed also on the ground that no Court fee was affixed on the said application. I am, therefore, of the opinion

that the trial Court has exercised the jurisdiction illegally and the impugned order discloses an error of law, apparent on the face of the record. I am also unable to accept the finding of the trial Court that merely allowing cross examination would not remedy the injustice and that the prejudice could be caused to the plaintiff if the defendant is allowed to produce the said documents. Considering the facts and circumstances of the case, I hold that the trial Court ought to have allowed the defendant to produce the documents mentioned in paragraph (3) above. The impugned order, therefore, cannot be sustained and deserves to be quashed and set aside.

6. In view of the above discussion, the impugned Order is quashed and set aside. The defendant is permitted to produce the documents mentioned in paragraph (3) above, subject to payment of costs of Rs.1500/- , which shall be deposited in the trial Court by the petitioner herein within a period of one week from today and after the same is deposited, the plaintiffs would be at liberty to withdraw the same.

7. Rule is made absolute in the aforesaid terms. Since the respondents have chosen not to put in appearance, no costs are awarded in favour of the respondents in this petition.

A .P. LAVANDE, J.

ssm